

07 CV 3316

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----  
RAVISHANKAR SUBRAMANYA  
Plaintiff,  
-v.-CIVIL ACTION  
NUMBER

HON. MICHAEL CHERTOFF,  
SECRETARY OF THE DEPARTMENT  
OF HOMELAND SECURITY;  
DR. EMILIO GONZALEZ,  
DIRECTOR OF THE UNITED  
STATES CITIZENSHIP AND  
IMMIGRATION SERVICES;  
and  
ANDREA QUARANTILLO,  
DISTRICT DIRECTOR OF THE USCIS  
DISTRICT OFFICE IN  
NEW YORK

PETITION FOR HEARING ON  
NATURALIZATION APPLICATIONDefendants.  
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Plaintiff RAVISHANKAR SUBRAMANYA, by his attorney, FREDRIC H. AARON, ESQ., as and for his Petition for Hearing on Naturalization Application, respectfully shows and alleges as follows:

**INTRODUCTION**

1. This is a Petition under the Immigration and Nationalization Laws, 8 U.S.C. §§1446 and 1447(b), which requires the United States Citizenship and Immigration Services ("USCIS") to make a decision on a naturalization application within 120 days after the examination of the applicant. The plaintiff, Ravishankar Subramanya ("Plaintiff"), is seeking to have this Court grant an adjudication of the naturalization application in the court and by the court, or, in the alternative, to remand the naturalization application to the USCIS for immediate adjudication.

**JURISDICTION AND VENUE**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 8 U.S.C. §1447(b). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §1331. Venue lies in this district under 8 U.S.C. §1447(b) as it is the district in which the Plaintiff resides.

**THE PARTIES**

3. Plaintiff is an Indian citizen who holds permanent resident status in the United States and has been a lawful permanent resident of the United States for at least 5 years. The Plaintiff resides at 267 Mountain Road, Pleasantville, New York 10570.

4. Defendant Hon. Michael Chertoff ("Chertoff") is the current Secretary of the Department of Homeland Security, a Cabinet level position in the Executive Branch of the United States Government, with departmental control and oversight over the USCIS.

5. Dr. Emilio Gonzalez ("Gonzalez") is the current Director of the USCIS, and holds control and oversight over each of the USCIS District Offices.

6. Andrea Quarantillo ("Quarantillo") is the current District Director of the USCIS District Office in New York.

**FACTS**

7. Plaintiff filed an Application for Naturalization on Form N-400 with the Vermont Service Center of the USCIS on December 27, 2004.

8. On January 3, 2005, the Plaintiff received a Notice of Action from the USCIS showing receipt of the Application of Naturalization on From N-400, the Application Number ESC\*001349784 and the INS A# 075 957 538.

9. On or about January 4, 2005, the Plaintiff received a Notice of Action from the USCIS directing the Plaintiff to report to the USCIS Application Support Center 246 North Avenue New Rochelle, NY 10801 for fingerprinting on January 21, 2005. Plaintiff was also directed to bring along the appointment notice and photo identification. Plaintiff reported on January 21, 2005 as directed.

10. On or about May 1, 2005, the Plaintiff received a Notice of Action from the USCIS to report for his examination by the USCIS at the Manhattan Center, 26 Federal Plaza, New York, NY 10278 on June 14, 2005 at about 11:30 A.M.

11. On June 14, 2005, the Plaintiff and his wife, Usha Sankar, reported to the Manhattan Center of the USCIS for their examination. The Plaintiff passed the tests of English and U.S. history and government. He was also interviewed by INS Officer A. Jenkins who told Plaintiff that he had passed the tests, his application would be sent for approval after the pending FBI background check was completed, and the USCIS would send him a written decision about his application within the statutorily mandated time period.

12. On or about June 30, 2005, Ms. Usha Sankar, the Plaintiff's wife, received notification of approval of her naturalization and was requested to attend an Oath Ceremony on July 13, 2005. Ms. Sankar attended the Oath Ceremony and became a naturalized US citizen.

13. On or about July 1, 2005, the Plaintiff visited the Manhattan Center of the USCIS to inquire about the status of his application and was told that his application was pending FBI background check.

14. On or about October 1, 2005, the Plaintiff visited the Manhattan Center of USCIS to inquire about the status of his application and was told that his application was still pending FBI background check.

15. On or about June 17, 2005, the Plaintiff filed a request under the Freedom of Information Act ("FOIA") with the FBI. Plaintiff filed a follow-up FOIA request with the FBI on July 15, 2005.

16. On or about July 16, 2005, the Plaintiff received a response from the FBI dated June 29, 2005 stating that the FBI could locate no records responsive to his FOIA request.

17. On or about October 17, 2005, Plaintiff received a letter from the USCIS stating that his application was still "pending receipt of security checks."

18. On or about October 18, 2005, the Plaintiff contacted Senator Charles E. Schumer for assistance with this matter.

19. On or about November 30, 2005, the Plaintiff contacted Representative Nita Lowey for assistance with this matter.

20. On or about December 4, 2005, Representative Nita Lowey contacted the FBI to get a status update on the Plaintiff's pending background check.

21. On or about February 24, 2006, the Plaintiff contacted Senator Hillary Rodham Clinton for assistance with this matter.

22. On or about March 7, 2006, Senator Hillary Rodham Clinton contacted the FBI to get a status update on the Plaintiff's pending background check.

23. On or about May 20, 2006, Michael A. Cannon of the FBI contacted the office of Senator Hillary Rodham Clinton to report that the FBI background check on the Plaintiff was still pending. On April 5, 2007, Plaintiff received a letter from the

office of Senator Hillary Rodham Clinton stating that the FBI background check was still pending.

24. On March 19, 2007, Fredric H. Aaron ("Aaron") contacted the USCIS to inform them of the Plaintiff's intention to sue under 8 U.S.C. §1447(b).

25. At all times during this process, Mr. Chertoff was the Secretary of Homeland Security. Since January 4, 2006, Dr. Gonzalez was the Director of the USCIS. On information and belief, since January 1, 2007, Ms. Quarantillo was the District Director of the USCIS District Office in New York. All of these individuals either had the authority to adjudicate the Plaintiff's application for naturalization or to order others to adjudicate the Plaintiff's application.

**PLAINTIFF'S CAUSE OF ACTION UNDER 8 U.S.C. §1447(b)**

26. 8 U.S.C. §1447(b) requires the USCIS to make a final decision on Plaintiff's application for naturalization within 120 days after the examination. In this case, the examination occurred on June 14, 2005, and therefore, a final decision was required to be made on or before October 12, 2005. The Defendants did not issue a final decision within this time period, nor did they provide any notice of disposition of any kind to Plaintiff regarding his application for naturalization.

27. Defendants have never demonstrated any legitimate reason for the delay. The FBI's response to Plaintiff's FOIA request clearly shows that he should pass any and all security background checks. We note that the FBI was able to respond to Plaintiff's FOIA request in only twelve (12) days.

28. Failure to adjudicate Plaintiff's application in the time specified by statute has prejudiced Plaintiff, including, without limitation, denying him the right to vote in the recent federal and local elections.

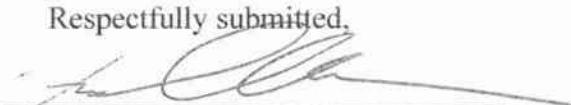
**REQUESTED RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Adjudicate Plaintiff's application for naturalization in his favor, and grant him the right to file a Notice of Naturalization Oath Ceremony; or
- B. In the alternative, remand Plaintiff's application for naturalization to USCIS and order the USCIS to make immediate adjudication of the application, but in any event, no later than thirty (30) days after this Court renders judgment; and
- C. In the event this Court grants Plaintiff the requested relief in either A or B, above, award Plaintiff his costs and reasonable expenses incurred in this action, including, without limitation, attorneys' fees, all pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412; and
- D. Grant such other relief as the Court may deem just and proper.

Dated: April 25, 2007

Respectfully submitted,

By: 

Fredric H. Aaron (FA8294)  
Fredric H. Aaron, Attorney at Law, PC  
14 Vandeventer Avenue, Suite 212  
Port Washington, NY 11050  
516-802-4140  
Attorney for Plaintiff

STATE OF NEW YORK, COUNTY OF NEW YORK, ss.

I, Ravishankar Subramanya, am the Plaintiff in the within action. I have read the foregoing Petition for Hearing on Naturalization Application and know the contents thereof. The contents of the Petition for Hearing on Naturalization Application are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



Ravishankar Subramanya

Subscribed and sworn to before me  
on April 25, 2007



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Fredric H. Aaron, Notary Public  
My commission expires on  
November 17, 2007

FREDRIC AARON  
Notary Public - State of New York  
No. 02AA6101466  
Qualified in Nassau County  
My Commission Expires Nov. 17, 2007